

applications represented that TTI was not directly or indirectly controlled by any other entity.⁷ MMB Ex. 28, p. 3. However, Crouch recognizes that TTI perhaps should have acknowledged that it was under the control of TBN in light of the common board memberships of Crouch and Duff. Tr. 3003-9. The TTI applications proposed unattended operation and carriage of KTBN-TV, TBN's flagship station. TBF Ex. 101, Tab L, pp. 35, 42 and Tab M, p. 33. It was understood that every application to be filed by TTI would specify carriage of TBN programming. Tr. 3355. Espinoza had no role in preparing or reviewing the applications before they were filed, and he never received a copy of any application filed by TTI. It was his understanding, based on discussions with Duff, that TTI would file applications based on a community's overall population and minority population. TBF Ex. 106, pp. 4-5; Tr. 4196-7, 4316-8.

25. TTI held its first annual board meeting in February 1982 jointly with the board meetings of "all corporations affiliated" with TBN. The common thread among these corporations was the presence of Crouch and Juggert or Crouch and Duff on their boards of directors. Although not required to do so by its bylaws, TTI, as did all the corporations in attendance, held an election of its directors and officers. Crouch, Duff and Espinoza were reelected. The only other business related directly to TTI that is noted in TTI's February 1982 minutes involved review of a financial statement prepared by TBN's financial director. The statement summarized the financial condition of the TBN corporations, including TTI. The minutes reflect no discussion of the status of TTI's translator applications or TTI's

⁷ Initially, TTI's application for Crestline, California, mistakenly listed Juggert as an officer and director of TTI. MMB Ex. 17, p. 7; Tr. 1606-7.

specific financial situation. At the meeting, Juggert acted as TTI's secretary. MMB Ex. 47; MMB Ex. 48; Tr. 1626-8, 2551-2, 3707-8.

26. TTI continued to hold its annual meetings jointly with TBN and its affiliated corporations through 1987. At those meetings, Crouch, Duff and Espinoza reelected themselves as directors and officers. In addition, beginning in 1985, TTI elected as an assistant secretary the same person or persons chosen as assistant secretaries for TBN and most of the other domestic TBN-affiliated corporations. MMB Ex. 55; MMB Ex. 70; MMB Ex. 91; MMB Ex. 124. According to Crouch and Duff, the assistant secretaries were added for signatory convenience, even though there was nothing for any TTI officer to sign until TTI's 1987 television application. Tr. 1657, 2637-8. Although Espinoza had no idea why the persons chosen were elected as officers of TTI, he never questioned the choices for assistant secretary. Tr. 4349-50.

TBN's Representations Concerning TTI

27. Notwithstanding the Commission freeze on the filing and processing of low power television and translator applications, TBN solicited funds from its supporters for TTI's pending translator applications in its "Praise the Lord" newsletters during 1982 and early 1983. The typical solicitation read:

Purchase a Low Power Broadcast Station for Your Hometown

1,000 watt low powered stations can reach entire cities 24 hours a day.
Applications currently on file include Washington, D.C., Las Vegas, San

Francisco and approximately twenty more major American cities. Each station costs \$110,000 (approximate average building cost.)

MMB Ex. 49, p. 18; MMB Ex. 53, p. 12; MMB Ex. 56, p. 6; Tr. 2555, 2562, 2571.

Applications for the aforementioned markets had been filed by TTI, not TBN. Despite the solicitations, TBN's financial statements (and TTI's tax returns) for 1982 and 1983 show no income for TTI. MMB Ex. 61, pp. 24-5; MMB Ex. 85; MMB Ex. 86, pp. 30-1. TBN's last solicitation for low power/translator stations occurred in its April/May 1983 "Praise the Lord" newsletter. Crouch does not remember why the solicitations stopped. Tr. 2590-1.

28. In the "Praise the Lord" newsletters which solicited funds for translators, TBN also requested money for Espinoza's program, "Felicidad." The newsletters described Espinoza as "a board member of our Satellite Division." MMB Ex. 49, p. 17; MMB Ex. 53, p. 11; MMB Ex. 56, p. 5. The only board on which Espinoza served that had any connection with TBN during this time was TTI. Neither Crouch, Duff, Espinoza nor Juggert raised any objection to the nature of the characterization of Espinoza or reference to TTI as TBN's satellite division. Tr. 2555-6, 2562, 2571, 3937-9, 4172-3. TBN in its "Praise the Lord" newsletters continued to represent Espinoza as a member of its satellite division through 1984. MMB Ex. 66, p. 5; MMB Ex. 76, p. 5; MMB Ex. 82, p. 12.

TTI's Financial Situation

29. On November 19 and 20, 1980, TBN conducted a telethon to raise money for various programs and projects including TTI's translator applications. TBF Ex. 104, pp. 20-

1. The telethon raised \$21 million in pledges. MMB Ex. 18, p. 1. William Phipps ("Phipps"), TBN's Director of Finance, determined that, of that amount, slightly more than \$9 million was pledged for "satellator/translator stations." MMB Ex. 19. Subsequently, Phipps refined the projection by determining that more than \$500,000 was pledged for the purpose of building translators. MMB Ex. 29. Although TBN received some \$17 million in contributions during the 17 month period ending December 31, 1981, TBN's accounting department credited only \$31,033 to TTI. All of the money for TTI apparently came in 1980. No money was credited to TTI for 1981 despite a specific solicitation for low power stations during TBN's 1981 fall telethon. MMB Ex. 38; MMB Ex. 43, p. 6; MMB Ex. 50, pp. 6 and 21; Jt. Ex. 1, p. 7.

30. TTI did not open a bank account with the money credited to it by TBN. Jt. Ex. 1, p. 3. Furthermore, TBN's accounting department debited TTI for expenses which TTI had not incurred. Jt. Ex. 1, pp. 7, 10-2. Thus, TTI's federal tax return for 1980 shows that TTI had incurred expenses of \$23,249, leaving a positive fund balance of \$7,784. MMB Ex. 38. Moreover, notwithstanding the processing and application filing freeze imposed by the Commission in 1981, TBN's financial statement for that year showed that TTI incurred sufficient expenses in 1981 to have a *negative* fund balance of \$34,820. MMB Ex. 50, p. 21. Similarly, TTI's 1981 tax return showed that it had received no income, but had incurred \$46,418 in expenses. MMB Ex. 52. TTI's lack of income from solicitations and unexplained mounting debt made little or no impression on its three directors. MMB Ex. 55, p. 2-3; Tr. 1630-1, 2560-1, 2566. Espinoza, TTI's chief financial officer, did not receive a

copy of the 1980 or 1981 tax returns filed by TTI, and there is no evidence that he reviewed them prior to their filing or had any involvement in their preparation. Tr. 1624, 2560-1, 4196.

31. Although TTI had little if any business activity in 1982 and 1983, its debt, according to TBN's accounting department, continued to increase significantly. MMB Ex. 61, p. 25; MMB Ex. 86, p. 31. Thus, by the end of 1983, TBN's financial statement showed that TTI had "intercompany accounts payable" of \$386,424, and a *negative* fund balance of \$206,853. MMB Ex. 86, pp. 28-9. Although these figures were reviewed by TTI's directors, they generated no questions, comments or concern. MMB Ex. 70, p. 5; Tr. 1637, 1653-4, 2582-3, 2624, 2628, 4334-5. On the contrary, after reviewing the 1983 audited financial statement for TBN, which included TTI, Espinoza "expressed his appreciation to God for His faithfulness." MMB Ex. 91, p. 3.

32. TTI's indifference toward its financial situation continued through the filing of its February 1987 application to obtain its first full power television station. Thus, while TBN's 1984 and 1985 financial statements, which included columns for TTI, reflected an ever rising debt for TTI, none of TTI's directors questioned the reasons for the debt, the accuracy of the figures, or the propriety of including TTI information with data for TBN and its owned and operated companies. MMB Ex. 93; MMB Ex. 101; MMB Ex. 110; MMB Ex. 124; Tr. 1660-1, 2635-6.

TTI's Minority and Diversity Certifications

33. On March 31, 1983, the Commission adopted a Second Report and Order in General Docket No. 81-768, pertaining to rules allowing the use of lotteries to select from among certain competing applications. Random Selection Lotteries, 93 FCC 2d 952 (1983). Among other things, the Commission decided to give preferences to low power television and translator applicants that: (1) were more than 50% controlled by minorities; and (2) owned no other media of mass communications. The latter was called a diversity preference. A lesser diversity preference would be given to applicants that owned three or fewer media of mass communications. Those who had already filed a low power or translator application were permitted to amend their applications to obtain credit for any allowable preferences. A minority preference was available to applicants whose beneficial minority ownership, including that conferred by a limited partnership interest or a beneficial interest in a trust, exceeded 50%. Thus, to qualify for a minority preference, the ownership of the applicant, and not working control, was all important. In determining eligibility for a diversity preference, an ownership interest would be counted against the applicant or its owners if the person or persons involved owned more than 50% of a medium of mass communications. Random Selection Lotteries, 93 FCC 2d at 953, 970, 976-7, 979. In August 1983, the Commission issued a public notice with instructions and a form to certify entitlement to a minority and diversity preference. TBF Ex. 105, Tab G.

34. In March 1983, the TBN board consisted of Crouch, Duff and Juggert.

Consequently, Duff and Crouch constituted 2/3 (66.7%) of the board of TBN. In addition, Duff was or had become an officer and director of TBA, TBOC, TBF, TBI and TBNY, each of which was the licensee of a full power television station. MMB Ex. 42; MMB Ex. 55; Tr. 2564-5.

35. On May 27, 1983, the TBN board held a special meeting in which it added Janice Crouch, Crouch's wife, to TBN's board. She was not then made an officer. As a result, the TBN board consisted of Crouch, Janice Crouch, Duff, and Juggert. MMB Ex. 57. Shortly after Janice Crouch became a TBN board member, she gave Crouch a proxy to vote on her behalf at all TBN board meetings. MMB Ex. 58. According to Crouch and Juggert, Janice Crouch did not like to attend TBN's business meetings. Adding Janice Crouch to TBN's board did not change her basic responsibilities at TBN.⁸ Janice Crouch was not added at this time to the boards of TBA, TBOC, TBF, TBI or TBNY. Tr. 2574-5, 2990-3, 3911-2, 3913-6.

36. The minutes for TBN's May 27, 1983, meeting reflect that Janice Crouch was added to provide "checks and balances" to TBN's board. MMB Ex. 57. According to Crouch, Janice Crouch was made a board member to give her some "security" and to allow for continuity of the TBN ministry in the event Crouch died or became incapacitated. Tr.

⁸ At this time, Janice Crouch worked in TBN's programming department and regularly appeared as a co-host on TBN's Praise the Lord and Behind the Scenes programs. She also assisted in the preparation of the monthly "Praise the Lord" newsletter and frequently traveled with Crouch on TBN business. MMB Ex. 49, pp. 4 and 13; MMB Ex. 53, p. 9; MMB Ex. 56, p. 3; Tr. 2444-6.

2573-4, 2960-1. Juggert understood that in the event of Crouch's death, Janice Crouch would succeed Crouch as president and be entitled to the protections from removal of office accorded the president by TBN's bylaws. Tr. 3656-7, 3904-6. However, when Janice Crouch was added to TBN's board, Duff was TBN's vice president. Janice Crouch did not become TBN's vice president, and thus stand next in line to Crouch, until sometime after Duff resigned from TBN's board in August 1984. MMB Ex. 70, pp. 2-4; MMB Ex. 80; MMB Ex. 91, p. 4. Colby May ("May"), who had recently left Gammon and Grange to form a new law firm which would represent TBN, does not know why Janice Crouch was added to the board. Tr. 3290. Moreover, Janice Crouch, herself, does not appear to know why she was made a director of TBN. MMB/TBF Jt. Ex. 1, Tab H.

37. Although Crouch denies that Janice Crouch was made a TBN board member for the purpose of increasing TTI's diversity preference, that was the net effect.⁹ Tr. 2575-7. By virtue of Janice Crouch's addition to TBN's board, Crouch's and Duff's combined interest in TBN was reduced from 2/3 (67%) to 1/2 (50%). Because Crouch's and Duff's combined interest in TBN was no greater than 50%, May and Duff believed that TTI was then in a position to, and did in fact, certify in February 1984 with respect to its pending

⁹ Also, as a practical matter, Crouch now had two votes, which, according to Juggert, both Juggert and Duff understood and wanted. Tr. 3913.

translator applications that it was entitled to a full diversity preference.¹⁰ MMB Ex. 72; Tr. 1641, 1643. Although only three such certifications are in the record, it is likely that certifications were filed for all pending TTI applications. MMB Ex. 129, p. 32.

38. In addition to certifying that it was entitled to a full diversity preference, TTI certified that it was entitled to a minority preference. MMB Ex. 72. May advised Duff that TTI was entitled to certify to a minority preference because two of its three directors were members of minority groups. TBF Ex. 105, p. 9; Tr. 1640, 3106, 3275-7. TTI filed the minority preference certifications with respect to the same applications wherein it had claimed entitlement to the full diversity preference. MMB Ex. 72.

Colby May and TBN

39. May and his law partner Joseph E. Dunne, III, are and have been TBN's principal FCC counsel since 1983. May's practice focuses on communications, particularly broadcast, matters. May has practiced law, primarily before the Commission, since his admission to the bar in 1980. TBF Ex. 105, pp. 2-3. TBN is now, and always has been, May's biggest client. Tr. 3056, 3248-9.

¹⁰ In determining whether TTI was entitled to a diversity preference, May and Duff only considered the media interests of TBN. They did not consider the media interests of TBA, TBOC, TBNY, TBI, TBW or TBF. Thus, May and Duff failed to note that, with the recent departure of a TBF board member, Crouch and Duff constituted 67% of TBF's board. Hence, TTI should not have claimed the full diversity preference. MMB Ex. 55, p. 1; MMB Ex. 70, p. 2; Tr. 1641, 3285-8.

40. From the inception of his practice, May's monthly bill to TBN contained a line item entry for each of the various companies for which TBN was responsible. Thus, May's bill would itemize services rendered to TBA, TBOC, TBF, etc. and provide a total amount due from TBN. TBF Ex. 105, Tab D. By billing in this fashion, May could keep his administrative costs down, and TBN's accounting department could still keep track of the amounts expended on behalf of each company. May's hourly rate was the same for each Trinity company. MMB Ex. 62. In addition, when a new company was added to the TBN family of companies, May added the new name to the bill, itemized the charges for that company, and included those charges in the total billed to TBN. Thus, for example, in late 1983, when May began to provide services for Community Educational Television, a company which TBN organized (see ¶ 46, infra), May simply added the new company to TBN's bill. MMB Ex. 62; MMB Ex. 64; MMB Ex. 68; Tr. 2593-4, 3319-20.

41. As noted, May had reviewed the Commission's August 1983 public notice dealing with translator application preferences and provided advice to Duff regarding TTI's eligibility for the minority and diversity preferences. TBF Ex. 105, pp. 10-1 and Tab G. In addition, May's firm filed the three certifications made by TTI for its pending applications for construction permits for translators to serve Philadelphia, Columbus and St. Louis. MMB Ex. 72. Finally, May notified Duff of any TTI applications returned by the Commission. Although all these services were rendered on behalf of TTI, May billed TBN for them. None of May's bills to TBN for these services included any reference to TTI, nor was there a separate bill prepared for TTI. MMB Ex. 68; MMB Ex. 74; MMB Ex. 75;

MMB Ex. 77; MMB Ex. 78; MMB Ex. 79; Tr. 3307-12.

TBN's Activities During Pendency of TTI Applications

42. While TTI's applications were awaiting processing at the Commission, TBN expanded its full power commercial television station holdings to the then-permissible limit of seven. As noted, by the time TTI was formed in September 1980, TBN, through its companies, TBA, TBOC and TBF, had or was about to acquire licenses for full power television stations in Southern California, Phoenix, Oklahoma City and Miami. MMB Ex. 17, pp. 11-3; MMB Ex. 25, p. 4; TBF Ex. 104, p. 4. In the spring of 1981, TBN formed Trinity Broadcasting of Indiana, Inc. ("TBI"), which acquired the license for a full power commercial television station in Richmond, Indiana. MMB/TBF Jt. Ex. 1, pp. 1-2; MMB Ex. 39. In the fall of 1981, TBN formed Trinity Broadcasting of New York, Inc. ("TBNY"), which acquired the license for a full power commercial television station in Poughkeepsie, New York. MMB/TBF Jt. Ex. 1, p. 2; MMB Ex. 45. Finally, in 1983, TBN company Trinity Broadcasting of Seattle, Inc. (later, Trinity Broadcasting of Washington, Inc. or "TBW") acquired the license for a full power commercial television station in Tacoma, Washington. MMB Ex. 49, p. 18; MMB Ex. 55, p. 2; MMB Ex. 56, p. 4.

43. Between 1982 and the summer of 1984, each of the aforementioned Trinity companies had Crouch, Duff and Juggert as three of its officers and directors. Typically,

Crouch was president, Duff was vice president, and Juggert was secretary/treasurer. MMB Ex. 42; MMB Ex. 55; MMB Ex. 70; Tr. 2564-5. Juggert kept the corporations' minute books. Tr. 3708-11, 3821, 3828, 3897-8. In late 1984 or early 1985, Janice Crouch took Duff's place as a director and as a vice president of new Trinity licensee corporations as well as TBA, TBOC and TBF. MMB Ex. 91; Tr. 2592. From 1982 through 1987, all of the Trinity-named companies (including others which will be discussed later) held their annual meetings jointly with Crouch presiding. Except in 1982 when it had no annual meeting, TTI held its annual meeting as part of the joint annual meetings of the TBN companies, and elected as assistant secretaries the same persons elected to the position of assistant secretary of the Trinity-named companies. MMB Ex. 47; MMB Ex. 48; MMB Ex. 55; MMB Ex. 70; MMB Ex. 91; MMB Ex. 101; MMB Ex. 124.

44. At their formation and at various points in their history, TBI and TBNY (but not TBW) have had directors who were not also directors of TBN. Nevertheless, Crouch and Juggert have always viewed TBI and TBNY (and TBW) as owned and operated companies of TBN. MMB Ex. 53, pp. 1, 5; TBF Ex. 104, p. 4; Tr. 2561, 2568, 3957-9. Consequently, TBN has always counted the TBI, TBNY and TBW full power commercial broadcast television stations as TBN stations in assessing compliance with the Commission's multiple ownership rules. MMB Ex. 56, pp. 1, 4; MMB Ex. 67; MMB Ex. 76, p. 4; MMB Ex. 104, p. 4; MMB Ex. 127, p. 4; TBF Ex. 101, Tab R, pp. 1-10. Except for each station's locally produced programs, the TBI, TBNY and TBW stations have always broadcast TBN

programming. MMB Ex. 53, p. 8; MMB Ex. 76, p. 2; MMB Ex. 82, p. 2; MMB Ex. 100, p. 3.

45. To finance the acquisition and/or construction of the television stations in Richmond, Poughkeepsie and Tacoma, TBN advanced the necessary funds without interest to the respective licensee corporations, just as it had done with respect to the stations licensed to TBA, TBOC and TBF. As with the monies loaned to TBA, TBOC and TBF, the TBN loans to TBI, TBNY and TBW were evidenced only by the TBN companies' joint accounting records and financial statements, not by any notes or security agreements. MMB Ex. 44; MMB Ex. 46; Tr. 2546-7. TBI, TBNY and TBW repaid TBN as their respective stations became operational and began receiving contributions. TBN's accounting department determined from monies received by the stations or by TBN directly how much should be allocated to debt reduction and how much should be retained by each licensee corporation. MMB Ex. 61; MMB Ex. 86; MMB Ex. 93; MMB Ex. 110; Tr. 3951-3.

46. With TBN having reached its ownership limit of seven full power commercial television stations and there being some question as to when the Commission would complete processing of its and TTI's translator applications, Crouch looked for other means to spread the gospel. One way, which had already been in use for some time, was cable carriage.¹¹

¹¹ By the spring of 1982, TBN programming appeared on cable systems in 31 states. MMB Ex. 49, pp. 5-6. By the fall of 1983, TBN programming appeared on cable systems in 37 states. MMB Ex. 66, pp. 12-14. By June 1986, TBN was carried on 450 cable systems in 42 states. MMB Ex. 104, p. 1.

Another way was by means of an agreement with television licensees to carry TBN programming. MMB Ex. 66, p. 11. A third way was to apply for noncommercial educational television channels. MMB Ex. 73, p. 1. Thus, in 1983, Crouch organized a corporation to file applications for noncommercial television stations. MMB Ex. 56, p. 1; MMB Ex. 104, p. 1; Tr. 2569. Crouch called the new corporation Community Educational Television, Inc. ("CET"). Crouch, Duff, Juggert and Julie Arguinzoni, a TBN employee, became CET's directors. Crouch made himself president; Duff, vice president; Juggert, secretary/treasurer; and John Casoria, Phipps' successor as TBN's finance director, assistant secretary. MMB Ex. 70, p. 4. In 1984, CET obtained a construction permit for a new noncommercial educational television station at Harlingen, Texas. Thereafter, Crouch hoped that CET would acquire additional noncommercial educational television stations. MMB Ex. 70, p. 6. CET held its annual meetings jointly with TBN and the Trinity-named companies from 1984 through 1987. Crouch, Duff and Juggert have served continuously as CET board members. MMB Ex. 70, pp. 4; 1; MMB Ex. 91; MMB Ex. 101; MMB Ex. 124; TBF Ex. 122, pp. 250-6; MMB Ex. 402, p. 7.

47. Like the Trinity-named corporations, CET received its initial funding in the form of an interest-free loan from TBN, and the CET loan was evidenced only on TBN's financial statements and books, not by any note or security agreement. CET's obligation to TBN was not reduced to a note until January 1, 1993. Jt. Ex. 1, p. 28. However, unlike the Trinity-named companies, CET appeared only on TBN's 1983 financial statement. MMB Ex. 86, pp. 28-31. Beginning with calendar year 1984, CET had its own financial statement;

however, that statement was prepared by the same accounting firm that prepared TBN's financial statement, and the CET statement was sent to TBN. MMB Ex. 93, p. 4. This occurred because TBN's accounting department handled CET's money until CET set up its own accounting department. MMB Ex. 324; Tr. 3928-9.

48. Notwithstanding the formation of a separate accounting department for CET and the signing by TBN of program affiliation agreements with CET's three stations in Harlingen, Beaumont and Houston, TBN has continually represented that CET's stations are owned and operated by TBN. MMB Ex. 89, p. 1; MMB Ex. 104, p. 4; MMB Ex. 111, pp. 1-3; MMB Ex. 110, p. 4; MMB Ex. 127, p. 4; MMB Ex. 148, p. 1; MMB Ex. 160, p. 7; MMB Ex. 164, p. 2; MMB Ex. 184, pp. 2-3; TBF Ex. 122, p. 254; Tr. 2625. In addition, throughout CET's existence, May and Juggert have provided legal services and W. Benton Miller ("Ben Miller"), TBN's vice president for engineering, has been CET's vice president for engineering. MMB Ex. 378; TBF Ex. 105, Tab D, pp. 7-69; Glendale Ex. 210, p. 14; Jt. Ex. 1, p. 28; Tr. 3421-2.

49. When the Commission began to grant low power and translator applications in 1983, Crouch learned that some permittees were unable to build and operate their stations. Consequently, the bare permits became available for sale for no more than the permittee's legitimate and prudent expenses. Crouch determined that buying the permits and building the stations would be an economical way of expanding TBN's audience. MMB Ex. 63, p. 1. Although TTI was created for the purpose of applying for and acquiring television translator

stations, neither Crouch nor Duff gave any consideration to having TTI purchase the available permits. MMB Ex. 11; Tr. 2624, 3895-7, 3967-9. Duff claims that TTI could not afford to buy them. Tr. 1467-8. Crouch viewed TTI merely as a vehicle to obtain translator stations by applying for new construction permits which allowed TTI to take advantage of the minority and diversity preferences. Tr. 2587-8. Such preferences were useful only if TTI's new construction permit application happened to be mutually exclusive with another construction permit application for the same or nearby location. The preferences were unavailable in the context of an assignment application. Tr. 1468. TBN began buying permits no later than 1984 and continued to purchase them thereafter. MMB Ex. 70, p. 5; MMB Ex. 87; MMB Ex. 91, pp. 2, 6; MMB Ex. 96, p. 3; TBF Ex. 122, pp. 1-22; Tr. 2607, 2632.

50. In addition to spawning TTI and CET, TBN, beginning in 1983, assisted other Christian television broadcasters by lending them money to acquire or build their stations. The corporations included: Tri-State Christian TV; All American TV, Inc.; Oceania Broadcasting Network, Inc.; Prime Time Video, Inc. (later known as Prime Time Christian Broadcasting, Inc.); Radiant Life Ministries, Inc.; and Sonlight Broadcasting Systems, Inc. (collectively, "borrowers"). However, unlike the no-interest, no-note arrangements with TTI and CET, TBN obtained interest bearing notes, security agreements and/or special concessions in program affiliation agreements from the borrowers. Jt. Ex. 1, pp. 29-38; MMB Ex. 114; TBF Ex. 101, Tab Y; TBF Ex. 105, Tab S; Tr. 1669-72, 2351-3, 3984-7. Further, while the borrowers generally aired TBN programming pursuant to program

affiliation agreements with TBN, TBN never represented that the borrowers' stations were owned and operated by TBN. MMB Ex. 73, p. 1; MMB Ex. 100, p. 2; MMB Ex. 104, p. 4; MMB Ex. 112; Tr. 2643-4, 2651, 2662-3. In addition, the borrowers did not rely on TBN's accounting department to process their contributions, and their financial information did not appear as part of TBN's financial statements. MMB Ex. 86; MMB Ex. 93; MMB Ex. 110. Moreover, they held their own annual board meetings apart from TBN, and they did not have any TBN employees or board members as officers or directors. MMB Ex. 70, p. 8; MMB Ex. 91; MMB Ex. 101; MMB Ex. 114; Tr. 3965. Finally, when May rendered legal services to the borrowers, he billed them directly, not through TBN. Tr. 3424-9.

51. As noted above, Duff resigned from TBN's board and, contemporaneously, from the boards of all the TBN companies which held licenses for full power commercial television stations in the United States in the summer of 1984. MMB Ex. 80. Duff resigned from the boards of these companies because of her increased workload at TBN, where she now held the title of assistant to the president and had responsibility for network EEO, ascertainment, programming and public file compliance. Glendale Ex. 212; Tr. 1650, 2630-1, 3477-8. In addition, she was the principal liaison between TBN and May. Tr. 2630-1. She did not resign from the boards of TTI, CET, Trinity Broadcasting of Nevis or Trinity Broadcasting of Ciskei, the latter two being foreign corporations established by TBN to run television stations in the Caribbean and South Africa. MMB Ex. 91; MMB Ex. 101; Tr. 3901-4. Neither Crouch nor Juggert made any effort to replace Duff with a minority on any of the domestic TBN company boards. Tr. 2631, 3898. Soon after Duff's resignations,

Janice Crouch became vice president of the domestic TBN-named broadcasting companies.

MMB Ex. 91. Despite her resignation from the majority of the TBN companies as an officer and director, Duff continued to attend many TBN board meetings in her capacity as assistant to the president. MMB Ex. 96; MMB Ex. 98; MMB Ex. 99; Tr. 1668, 1674, 1677.

TBN Expands to 12 Full Power Commercial Television Stations

52. On February 1, 1985, the Commission released a Memorandum Opinion and Order ("MO&O") in General Docket No. 83-1009. Therein, the Commission affirmed a prior decision to modify the national multiple ownership rules to allow group owners to hold cognizable interests in up to 12 television stations. In addition, the Commission determined that a group owner could hold cognizable interests in up to 14 television stations if two of the stations were minority controlled.¹² Minority controlled was defined as more than 50% owned by one or more members of a minority group. The new rules were to become effective April 2, 1985. Amendment of Section 73.3555, 100 FCC 2d 74 (1985). The MO&O (and the underlying Report and Order, 100 FCC 2d 17 (1984)) did not address the concept of de facto control, nor did it change Note 1 to Section 73.3555, which reads as follows:

¹² The caps for television station ownership were also subject to an audience reach limitation.

Note 1: The word "control" as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.¹³

Thus, the multiple ownership rules continued to prohibit ownership *and control* by one person or group in excess of specific numerical limits.

53. Shortly after the new rules became effective, TBN set out to acquire additional full power commercial television stations. By TBN's 1986 annual meeting, Crouch reported that TBN had obtained or would soon obtain stations in Albuquerque, New Mexico; Canton, Ohio; and Greensboro, North Carolina. The first would be licensed to TBA, while the other two would be licensed to TBN. TBN viewed these stations as its eighth, ninth and tenth full power commercial television stations. MMB Ex. 96; MMB Ex. 101, p. 2; MMB Ex. 102, p. 1. By June 1986, TBN was awaiting Commission approval for its eleventh and twelfth stations: Bloomington/Indianapolis, which would be licensed to TBI; and Dallas, which would be licensed to TBT. MMB Ex. 99; MMB Ex. 104, p. 1. No consideration was given as to whether TTI should acquire any of these full power commercial television stations. Tr. 2639.

TTI Becomes National Minority TV, Inc.

54. Sometime in 1986 after Crouch knew that TBN had reached or was about to

¹³ Note 1 dates back to the early years of the national multiple ownership rules. See Amendment of Sections 3.25, etc., 18 FCC 288, 296 (1953).

reach its limit of 12 full power commercial television stations, Crouch was contacted by Dave Roevers, a long-time TBN programmer. Dave Roevers related that his brother, Alfred, held a construction permit for an unbuilt full power commercial television station in Odessa, Texas. Crouch informed Duff that Alfred Roevers wanted to sell his construction permit to Trinity. Duff called May to explore what could be done. Tr. 1688, 2697-8; MMB Ex. 82, pp. 2, 11; MMB Ex. 100, p. 3.

55. May determined, and so advised Crouch, that TTI could acquire the Odessa construction permit. TBF Ex. 104, p. 14. In forming his opinion, May read Amendment of Section 73.3555 and the resulting rule, but did no other research. Tr. 3488-91. May concluded that because two of the three persons on TTI's board were minorities, Crouch could obtain an interest in a thirteenth full power commercial television station, provided the national audience reach of TBN's stations did not exceed the limit set by the Commission's Rules. TBF Ex. 104, p. 14. In rendering his advice, May did not concern himself with how TTI had actually operated or whether TBN and/or Crouch actually controlled TTI. Tr. 3220-5, 3228-30, 3372-7, 3611. In May's view, TTI's legal standing and the racial and ethnic identity of its three board members were the crucial factors which would allow TBN and TTI to qualify for the multiple ownership exception to the rule of 12. TBF Ex. 105, p. 13. May's opinion and the basis for it were never reduced to writing. Tr. 3229-30, 3488.

56. On December 22, 1986, following several telephone conversations with Duff about the possible sale of the Odessa permit, May sent Duff a draft purchase agreement.

May pointed out to Duff that the agreement contained a special provision concerning Crouch because Crouch had ownership interests in the maximum number of full power commercial television stations allowed by the Commission. That provision required a Commission finding that TTI qualified as a minority controlled organization as defined by Section 73.3555 of the Commission's Rules. MMB Ex. 119. May's bills for the period November 10 through December 12, 1986, and the period December 15, 1986 through January 9, 1987, show no charges to TTI. MMB Ex. 118; MMB Ex. 123. According to May, he did not bill TTI for services performed which lead to the signing of the agreement to purchase the Odessa station. Tr. 3300.

57. On December 29, 1986, Duff sent the purchase agreement to Dave Roever. Duff prepared her transmittal letter on TBN stationery and signed it as assistant to the president (of TBN). MMB Ex. 120. She now feels that it was an error to use TBN stationery for TTI-related business. Tr. 1696. The agreement was executed on January 10, 1987. Duff signed on behalf of TTI as its vice president. MMB Ex. 122.

58. The purchase agreement, in section 7(a), recites that TTI is a nonprofit corporation organized and in good standing under the laws of California. Because Crouch had the maximum number of interests allowed a non-minority, the agreement recognizes that TTI would have to establish compliance with Section 73.3555(d)(1)(A) and 73.3555(d)(2)(A) of the Commission's Rules. The agreement provides that if the Commission does not approve the agreement because of Section 73.3555, the agreement will become void. The

agreement also states in section 7(b) that execution and delivery of the agreement and consummation of the purchase of the station has been duly authorized by TTI's board. MMB Ex. 122, pp. 7-8. There is no documentary evidence to suggest that, at the time the agreement was executed, TTI's board had considered (much less approved) the purchase or discussed financing for the acquisition or construction of the station.

59. On January 19, 1987, TTI held its annual board meeting in conjunction with the annual meetings of TBN and its affiliated corporations. Among others, Crouch, Duff, Juggert and May attended. Espinoza did not attend. At the joint meeting, Crouch remarked that Trinity was in the business of acquiring stations since ownership will protect against damage to TBN's ministry. May discussed equal employment opportunities. Duff reported about ascertainment. Among other things, TBN's board authorized TBN to spend up to \$3 million to acquire low power television construction permits and stations. No money was allocated to TTI for translators or low power stations and the minutes are silent about TTI's contract to buy a full power television permit for Odessa. TTI reelected Crouch, Duff and Espinoza as directors and officers and added TBN employees, Phillip Crouch and Terrence Hickey ("Hickey"), as assistant secretaries. MMB Ex. 124; Tr. 2684-9.

60. On January 26, 1987, Crouch, Duff and Hickey¹⁴ signed an action by written consent authorizing TTI's officers to take all necessary action to acquire the Odessa permit. The action by written consent also authorized TBN to act as TTI's accounting agent until

¹⁴ Hickey was never a TBN director. Tr. 2694-95.

further notice. Among other things, TBN was empowered to process donations to TTI, pay its bills and prepare its financial statements. Both Duff and Crouch acknowledge that the latter authorization simply memorialized past practice. MMB Ex. 125. The action by written consent was prepared by Juggert at May's suggestion. Espinoza did not sign the action by written consent until 1993, several years after he had resigned from TTI's board. Tr. 1470-1, 2313, 3714-5.

61. On January 30, 1987, Duff transmitted to May the application for Commission consent to the assignment of the Odessa permit. Duff prepared her transmittal letter on TBN stationery and signed it as assistant to the president (of TBN). MMB Ex. 126. On February 2, 1987, Crouch, Duff and Espinoza met and changed the name of their corporation from TTI to National Minority T.V., Inc. ("NMTV"). MMB Ex. 128. Espinoza and Duff had previously discussed the change in the corporation's name, and it is probable that Espinoza then learned from Duff that TTI was going to seek to acquire a construction permit for a full power station. However, Espinoza had no understanding why TTI had not previously considered buying a full power station permit, why it had not bought any low power or translator permits, or whether it would have made more sense in view of TTI's indebtedness for TTI to buy a low power rather than a full power station permit. TBF Ex. 106, pp. 7-8; Tr. 4344-7. Two separate minutes of the event were prepared. One was signed by Duff; one by Hickey. MMB Ex. 128. Subsequently, Juggert prepared and filed with the California Secretary of State's office the necessary paperwork to change the corporate name from TTI to NMTV. MMB Ex. 136. On February 3, 1987, May filed the Odessa

assignment application with the Commission. MMB Ex. 129.

NMTV's Odessa Application

62. The information contained in NMTV's portion of the assignment application for the Odessa permit was derived by May from the files he maintained pertaining to TTI/NMTV (hereafter NMTV), which had not been updated since 1981. He did not look at the files he maintained regarding TBN's ownership nor did he consider the results of the elections of officers conducted during the TBN companies' meeting held two weeks earlier. Tr. 3539-40, 3595-6. May claims he discussed the information in the application with Duff but not with Crouch. Tr. 3195-6. Although May insists that he received no special instructions from Crouch concerning disclosures to be made about NMTV and TBN's relationship, he also claims that Crouch made it clear to him that Crouch wanted complete and open disclosure of all factors which would show that NMTV was a minority controlled company. Tr. 3197, 3202-3, 3380-1. Crouch maintains that he told May to put everything on the record regarding the relationship of NMTV and TBN. Tr. 2667-74.

63. The NMTV application incorrectly reports that the company has, and had during its entire history, only three directors and officers; namely, Crouch, Duff and Espinoza. The application discloses Crouch's television holdings but submits that because two of NMTV's three directors are minorities, NMTV qualifies as a minority controlled company and Crouch can therefore have an interest in a 13th television station pursuant to Section 73.3555(d)(1) of

the Commission's Rules. Aside from referencing translator applications filed by TTI in which it had been stated that Duff was then a director of TBN and informing that both Crouch and Duff had interests in two CET stations, the application provides no information about Duff's relationship with TBN or NMTV's relationship with TBN. MMB Ex. 129, pp. 24, 32-3, 35-6; Tr. 3625-9. Although NMTV had, according to TBN's records, a negative fund balance of nearly \$350,000, NMTV certified that it was financially qualified to consummate the transaction and operate the facilities for three months. MMB Ex. 110, p. 8; MMB Ex. 129, p. 26. The application is silent about the source of NMTV's funds. Finally, there was nothing specific in the application about NMTV's programming plans, although it was understood from the outset that NMTV's Odessa station would broadcast TBN programming. MMB Ex. 129, 27, 40; Tr. 4145. Crouch signed the application after giving it a cursory review.¹⁵ Tr. 2699. After receiving a copy of NMTV's articles of incorporation, bylaws and organizational minutes, the Commission granted NMTV's application on June 9, 1987. MMB Ex. 139; Tr. 3538.

NMTV and TBN Activities During Pendency of Odessa Application

64. Shortly after the filing of the Odessa station, the search began for NMTV's second (and Crouch's 14th) full power commercial television station. After various communications with the holder of the construction permit for a station in Oroville,

¹⁵ In International Panorama TV, Inc. (KTBN-TV), FCC 83D-4 (released January 25, 1983), Crouch was found to have abdicated responsibility to assure himself that all representations in a renewal application were true and correct. SALAD Ex. 35, p. 21.